

37 Am. Jur. 2d Fraud and Deceit § 109

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Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

1. Necessity of Intent

§ 109. Fraudulent intent, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  4

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[Specific intent to defraud Government as necessary to impose liability under provisions of False Claims Act \(31 U.S.C.A. sec. 231\) pertaining to "false" or "fictitious" claims or statements, 26 A.L.R. Fed. 307](#)

Trial Strategy

[Real Estate Broker's Liability for Misrepresentation of Income, Earnings, or Profits from Property Sold, 59 Am. Jur. Proof of Facts 3d 511](#)

[Liability of Seller in Residential Real Estate Transaction for Misrepresentation Under "As Is" Contract, 59 Am. Jur. Proof of Facts 3d 463](#)

Forms

Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 207 (Instructions to jury—Elements of fraud—General form)

It has often been broadly stated that fraudulent misrepresentation is an intentional tort¹ and that fraud involves the idea of intentional deception.² Accordingly, while fraud liability is sometimes imposed for reckless,³ negligent,⁴ and even innocent⁵ misrepresentations, a fraudulent intent,⁶ i.e., an intent to deceive⁷ or mislead,⁸ is generally an essential element of actual fraud. It has been said in this regard that "scienter" is a mental state embracing intent to deceive, manipulate, or defraud.⁹

An "intent to defraud" involves a material representation that one knows to be false or what amounts to the same thing: an omission that one knows will create an erroneous impression.¹⁰ In order to show an intent to deceive, as required to establish liability for fraud, plaintiffs must show that the defendant knew, at the time representations were made, that they were false.¹¹ A party's intent is determined at the time of the representation challenged as fraudulent, but it may be inferred from the party's acts after the representation was made,¹² and a party is considered to intend the necessary consequences of its acts that are later challenged as fraudulent.¹³ Where an act is originally tainted with a fraudulent intent, the subsequent abandonment of the intent is ineffectual as against an innocent person who is injured by the act.¹⁴

Allegations of a mere breach of contract will ordinarily not suffice to support a finding of fraudulent intent.¹⁵ Moreover, in an action for fraud, a defendant's good faith and reasonable reliance on counsel may negate the culpable intent that is necessary to liability.¹⁶

The element of intent makes fraud actionable regardless of any contractual or fiduciary duty one party might owe to the other.¹⁷

Observation:

An action of deceit is to be distinguished from one for breach of warranty, the one sounding in tort and the other in contract,¹⁸ and in an action on a warranty, moreover, it is sufficient to show that a material warranty has failed,¹⁹ and where such is the case, scienter need not be alleged or proved.²⁰

CUMULATIVE SUPPLEMENT

Cases:

In action asserting claims for fraud, plaintiff must plead specific facts establishing intent, that is, evidence demonstrating that the defendant knew the alleged representation was false or misleading. *Natale v. Espy Corp.*, 2 F. Supp. 3d 93 (D. Mass. 2014).

To plead fraud under New York law, although a plaintiff need not allege scienter in detail, it must allege facts that are at least suggestive of intent to defraud, which may be done either by alleging a motive for the commission of a fraud or by identifying circumstances indicating conscious behavior by the defendants. [In re LightSquared Inc.](#), 504 B.R. 321 (Bankr. S.D. N.Y. 2013).

Specific intent to deceive is a necessary element of fraud. [LSA—C.C. art. 1953](#). [Lomont v. Bennett](#), 172 So. 3d 620 (La. 2015).

Prescription drug manufacturers had an intent to deceive Mississippi Division of Medicaid (Medicaid) regarding the average wholesale price (AWP) of generic drugs, as element required for the State to prove fraud in its action alleging that manufacturers inflated reported prices, which caused Medicaid to reimburse pharmacies at the inflated rates; manufacturers and others in the industry "marketed the spread" to pharmacies, which encouraged them to use manufacturers' products in order to return a greater profit and increase the individual market share of their drugs, AWP was a "tactic" and could be adjusted to be more competitive in the area of reimbursement, and manufacturers published their AWP with knowledge that Medicaid would see and use it in its reimbursement calculations. [Watson Laboratories, Inc. v. State](#), 241 So. 3d 573 (Miss. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Kramer v. Petisi](#), 285 Conn. 674, 940 A.2d 800 (2008).
- 2 [Gregory v. Consolidated Utilities](#), 186 Ark. 406, 53 S.W.2d 854 (1932); [In re Estate of Lane](#), 39 Kan. App. 2d 1062, 188 P.3d 23 (2008) (fraud requires intentional deception).
- 3 [§ 122](#).
- 4 [§§ 128 to 130](#).
- 5 [§§ 116, 121](#).
- 6 [South Branch Lumber Co. v. Ott](#), 142 U.S. 622, 12 S. Ct. 318, 35 L. Ed. 1136 (1892); [Froelich v. Erickson](#), 96 F. Supp. 2d 507 (D. Md. 2000), [aff'd](#), 5 Fed. Appx. 287 (4th Cir. 2001); [Anglin v. Anglin](#), 30 So. 3d 746 (La. Ct. App. 1st Cir. 2009).
18 U.S.C.A. § 1001 requires that statements be made with an intent to deceive, designed to induce a belief in the falsity or to mislead, but not an intent to defraud. [U.S. v. Lichenstein](#), 610 F.2d 1272 (5th Cir. 1980). As to intent to deceive or defraud as essential to claim of constructive fraud, see [§ 8](#).
- 7 [Linville v. Ginn Real Estate Co., LLC](#), 697 F. Supp. 2d 1302 (M.D. Fla. 2010) (applying Florida law); [Russell v. Southern National Foods, Inc.](#), 754 So. 2d 1246 (Miss. 2000); [Matter of Drummond](#), 123 N.M. 727, 1997-NMCA-094, 945 P.2d 457 (Ct. App. 1997); [Baker v. City of Robinson](#), 305 S.W.3d 783 (Tex. App. Waco 2009), review denied, (Oct. 22, 2010).
- 8 [Fairbanks Mobile Wash, Inc. v. Hubbell](#), 2009-Ohio-558, 2009 WL 294936 (Ohio Ct. App. 12th Dist. Warren County 2009); [Merten v. Portland General Elec. Co.](#), 234 Or. App. 407, 228 P.3d 623 (2010), review denied, 348 Or. 669, 237 P.3d 824 (2010).
- 9 [S.E.C. v. Retail Pro, Inc.](#), 673 F. Supp. 2d 1108 (S.D. Cal. 2009).
- 10 [In re Chavin](#), 150 F.3d 726 (7th Cir. 1998).
- 11 [Abrahami v. UPC Const. Co., Inc.](#), 224 A.D.2d 231, 638 N.Y.S.2d 11 (1st Dep't 1996).
Knowledge of falsity, generally, see [§§ 119 to 123](#).
- 12 [World Help v. Leisure Lifestyles, Inc.](#), 977 S.W.2d 662 (Tex. App. Fort Worth 1998).
- 13 [Peter J. Hartmann Co. v. Capital Bank and Trust Co.](#), 296 Ill. App. 3d 593, 230 Ill. Dec. 830, 694 N.E.2d 1108 (1st Dist. 1998).
Evidence establishing conscious disregard of another's rights is evidence indicating that the defendant was aware of the probable consequences of his or her acts and willfully and deliberately failed to avoid those consequences, for purposes of a fraud claim. [Notrica v. State Compensation Ins. Fund](#), 70 Cal. App. 4th 911, 83 Cal. Rptr. 2d 89 (2d Dist. 1999).
- 14 [Gregory v. Consolidated Utilities](#), 186 Ark. 406, 53 S.W.2d 854 (1932).

- 15 ESI, Inc. v. Coastal Corp., 61 F. Supp. 2d 35 (S.D. N.Y. 1999).
16 United Orient Bank v. Green, 215 B.R. 916 (S.D. N.Y. 1997), *aff'd*, 172 F.3d 38 (2d Cir. 1999).
17 Agricultural Ins. Co. v. Superior Court, 70 Cal. App. 4th 385, 82 Cal. Rptr. 2d 594 (2d Dist. 1999).
18 § 15.
19 Am. Jur. 2d, Sales §§ 625 to 641.
20 Am. Jur. 2d, Sales § 634.

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